THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 23404 of 1996

DATE: 17-01-2007

Between :

E.Veeraswamy Naidu

… Petitioner

And

Mandal Revenue Officer,
Palasamudram, Chittoor District and 2 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 23404 of 1996

ORDER:

The petitioner claims title and possession in respect of Acs.3.36 cents and Acs.2.00 cents of land in Sy.No.186/7 and Sy.No.179/2 respectively of Amudala village, Palasamudram Mandal, Chittoor District. It is stated that the land in Sy.No.186/7 was purchased by him under a registered sale deed dated
02-03-1967 from one A.Kondappa Naidu. The land in Sy.No.179/2 is situated just adjacent to the land in Sy.No.186/7, which also belong to Kondappa Naidu. The petitioner claims that though the registered sale deed was executed only in respect of Sy.No.186/7, he was put in possession of Acs.2.00 cents of land situated in Sy.No.179/2 also and since 1967 he has been in possession and enjoyment of the entire land. His possession was also recognized by the Revenue Authorities by collecting penalty for occupation of the land in Sy.No.179/2. He spent huge amounts for making the said land of Acs.2.00 cents situated in Sy.No.179/2 fit for cultivation and has been raising crops. While so, the Mandal Revenue Officer, Palasamudram visited the land in question on
01-11-996 and called upon the petitioner to vacate the land in Sy.No.179/2 within three days. Since the petitioner has been in possession for the past 29 years, he made a representation dated 02-11-1996 requesting to assign the said land in his favour. It is alleged that while keeping the said representation pending, the respondents have been attempting to dispossess the petitioner high-handedly. Hence, this writ petition declaring the alleged action of the first

respondent in attempting to dispossess the petitioner from the land in Sy.No.179/2 to an extent of Acs.2.00 cents as arbitrary and illegal.

It is primarily contended by the petitioner that even assuming that he is an encroacher, he cannot be dispossessed without following due process of law. Since no proceedings were initiated under any Statute to recover the possession of the land in question from him and no notice was issued at any point of time, the action of the respondents is arbitrary and illegal.

The Mandal Revenue Officer, Palasamudram filed a counter affidavit stating that the land in Sy.No.179/2 is classified as poramboke and an extent of Acs.2.80 cents of land has been encroached by the petitioner. The claim of the petitioner that he had purchased the land in Sy.No.186/7 from A.Kondappa Naidu was also been disputed. It is further stated that notice dated 04.10.1996 was issued to all the encroachers including the petitioner. As the petitioner was not present, the notice was served on him by substitute service. However, he failed to respond and eviction was ordered on 20-10-1996. However, the encroachers could not be removed since there was standing crop, and an auction of the standing crop in Sy.No.179/2 was conducted on

01-11-1996 in the presence of the petitioner's son by name Parthasarathy. One Ekambaram was declared as the highest bidder, who remitted the bid amount in to the Government Treasury on 20-11-1996.

The respondents 4 to 11, who claim to be small farmers having lands in Sy.No.172/9 got themselves impleaded and filed a counter affidavit stating that the petitioner is a rich land lord, who owns Acs.25.00 cents of land in Sy.No.186/7 of Amudala village and he had high-handedly and illegally encroached into the tank poramboke land.

The petitioner filed an affidavit in reply disputing the version of the respondents that he is holding land to an extent of Acs.7.53 cents. It is reiterated that he is a small farmer having only Acs.5.04 cents of land owned by him is joint family property.

I have heard the learned counsel for both the parties and perused the material on record.

Even from the version of the petitioner as pleaded in the affidavit filed in support of the writ petition, he had purchased only the land in Sy.No.186/7 from one A.Kondappa Naidu to an extent of Acs.3.36 cents. Though, he claimed that the land in question i.e. Acs.2.00 cents situated in Sy.No.179/2 also belongs to his vendor A.Kondapa Naidu, nothing has been placed before this court to show that he acquired any title to the said property. Even according to him he has been in possession and enjoyment of the said Acs.2.00 cents of land from 1967 onwards by paying penalty to the Revenue Authorities.

On the other hand, the specific case of the respondents is that the said land in Sy.No.179/2 is a poramboke land and the petitioner had illegally encroached upon the said land.

Though the petitioner failed to establish title to the land in question, the fact remains that he has been in possession and enjoyment of the same. If that be so, even if the case of the respondents that the said land is classified as Government poramboke is accepted, the possession can be recovered following due process of law. Though the respondents pleaded that proceedings under the Andhra Pradesh Land Encroachment Act, were already taken and an order of eviction was passed, having regard to the specific plea of the petitioner that there was no notice to him at any point of time, particularly having regard to the interim order granted by this Court which continued to be in force through out, I am of the opinion that it would be appropriate to afford an opportunity to the petitioner to put forth his version against the proposed action.

Accordingly, the order of eviction dated 20-10-1996 is hereby set aside and the writ petition is disposed of granting liberty to the petitioner to submit his objections against the proposed action within a period of four weeks from the date of receipt of a copy of this order. If any such objections are received by the first respondent within the time fixed above, the same shall be considered and appropriate orders be

passed in accordance with law following the procedure prescribed under the Andhra Pradesh Land Encroachment Act. Till such time, the petitioner's possession shall not be disturbed. No costs.

G. ROHINI, J.

Dt. 17-01-2007

KLP